

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**BILLY RAY BAILEY**

**PLAINTIFF**

**v.**

**No. 3:24-CV-155-MPM-RP**

**LEO MASK, et al.**

**DEFENDANTS**

**ORDER**

Defendants Sheriff Leo Mask, Deputy Ryan Roberts, and Deputy David Robertson have filed a joint motion seeking for this court to set aside the clerk's entry of default against them. In support of their motion, defendants cite "internal miscommunication by [their] liability insurance carrier" as the reason for their failure to timely defend themselves against this action. [Motion at 3]. It is well settled that "[f]ederal courts generally disfavor default judgments, preferring to resolve disputes according to their merits," *Lindsey v. Prive Corp.*, 161 F.3d 886, 892 (5th Cir. 1998), and this has always been this court's inclination as well. Indeed, the Fifth Circuit has held that that Rule 60(b) should be "applied most liberally to judgments in default," *see Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 403 (5th Cir. 1981), and defendants correctly note that there has only been an entry of default against them in this case, and not an actual default judgment. This court therefore agrees with defendants that their request to set aside the entry of default is well taken and should be granted.

This court notes that the *pro se* plaintiff has committed his own procedural missteps in this case, which resulted in Magistrate Judge Percy issuing a show cause order as to why his claim against Pontotoc County should not be dismissed for failure to prosecute. [Docket entry 18]. In response to this show cause order, plaintiff asserts that his proof of service against the

Pontotoc County Sheriff's Department was "lost in the mail," [response at 1], and this court will interpret his response as a commitment to make every effort to properly prosecute his claims in the future. With this understanding, and considering the fact that this court has shown leniency to defendants in this order, it will accept plaintiff's response to the show cause order as sufficient reason not to dismiss his claims against Pontotoc County.

It is therefore ordered that defendants' motion to set aside the clerk's entry of default is granted, and the Report and Recommendation issued in this case is dismissed as moot in light of this order.

So ordered, this the 30<sup>th</sup> day of January, 2025

/s/ MICHAEL P. MILLS  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF MISSISSIPPI